

dispenses cosmetic ingredients into the package to form a customized cosmetic formulation.

Claim 70 (new): The dispenser of claim 69, wherein the nozzles are radially disposed about the axis.

Claim 71 (new): The dispenser of claim 70, wherein actuating with the dispensing containers includes the use of pumps, screw drives or syringe dispensers.

Claim 72 (new): The dispenser of claim 71, further comprising the step of relocating the filled package within the apparatus after dispensing to effectuate delivery of a filled package to the retail customer by use of a motor driven platform.

#### REMARKS

In the Office Action mailed April 27, 2004, the Examiner rejected claims 37-56. Claims 37-72 are now pending in the application. Claim 38 has been amended and claims 57-72 have been added. Without conceding the validity of the double patenting rejection, but in the interest of expediting allowance, applicants submit a terminal disclaimer. By way of the foregoing amendments and the markings to show changes Applicants are of the opinion that the rejections to the claims have been rendered moot. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

#### New Claim 60

In view of the rejections of the Examiner, and the art of record, Applicants have submitted new claim 60. Applicants are of the opinion that, as with independent claim 37, new claim 60 will ultimately be deemed allowable. Likewise, dependent claims 61 through 72, which are dependent upon and further define claim 60, is allowable.

### Rejection Under 35 U.S.C. §103

Examiner rejected claims 38 and 48 under 35 USC §103(a) as being unpatentable over US Patent No. 6,516,245 to Dirksing et al., in view of US Patent No. 6,424,884 to Brooke et al. Examiner also rejected claim 49 under 35 USC §103(a) as being unpatentable over US Patent No. 6,516,245 to Dirksing et al., in view of US Patent No. 6,424,884 to Brooke et al., and in further view of US Patent No. 5,622,692 to Rigg et al.

Claim 38 has been amended to become dependent upon claim 37, an allowable independent claim, subject to a terminal disclaimer as discussed herein. Claims 48, and 49, which are dependent upon claim 38 are also now allowable for being indirectly dependent upon allowable claim 37. In view of the foregoing claim amendments, all of the rejection under 35 USC §103(a) have been rendered moot.

### Double Patenting Rejection

Examiner rejected claims 37-56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6,615,881 and claims 1-44 of U.S. Patent No. 6,672,341. However, the Examiner has indicated that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

Without necessarily conceding the validity of the Examiners rejection but in the interest of expediting prosecution, Applicants herewith have filed a terminal disclaimer in compliance with 37 CFR 1.321(c) thereby rendering the rejection to claims 37-56, under the judicially created doctrine of obviousness-type double patenting, moot.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claims. Rather, for instance, Applicants are filing a continuation application herewith to pursue the

breadth of at least claims 38, 48 and 49 as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims. However, in the interest of orderly prosecution, Applicants have withdrawn claims 38, 48 and 49 in favor of pursuit by continuation application.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

### CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 593-9900.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

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James M. McPherson  
Registration No. 53,306  
DOBRUSIN & THENNISCH PC  
401 S. Old Woodward Ave., Ste. 311  
Birmingham, MI 48009  
(248) 593-9900

Customer No. 25215